

## APPENDIX I

# METHODOLOGY AND TABULAR SUMMARIES OF OLD LAND CLAIMS

The following discussion is divided into four sections: introduction, methodology, organisation, and results. At the end of the results section, there is collection of tables presenting information on ‘old land claims’; that is, pre-Treaty land transactions which, under the terms of the 1841 New Zealand Land Claims Ordinance and 1856 Land Claims Settlement Act, had to be investigated by a Land Claims Commission before a Crown grant could be issued. The information presented in these tables was collated by Waitangi Tribunal researchers, Dr Barry Rigby and Michael Harman, over a four month period.

The introduction provides an outline of the two main objectives which guided Rigby and Harman in the construction of these tables. It also highlights some of the drawbacks associated with the objectives pursued. The methodology section details the range of sources consulted in the construction of these tables. The respective strengths and weaknesses of each source are also examined. In the third section, the organisation of the tables is explained. In particular, definitions for the various column headings are provided. This is especially important with respect to the fourth, and final, section which presents a quantitative analysis of the material contained within the tables.

### I.1 INTRODUCTION

The tables have been constructed with two objectives in mind. Firstly, to provide a quantitative measure of the significance, or otherwise, of old land claims, both nationally, and comparatively between regions. At this point it is important to note that these tables exclude those pre-Treaty ‘purchases’ made by the New Zealand Company at Wellington, Nelson, Porirua/Manawatu, Wanganui, and two at Taranaki.<sup>1</sup> This exclusion has occurred because the various New Zealand Company claims, while initially investigated under the provisions of the 1842 Land Claims Amendment Ordinance, were eventually settled in accordance with political imperatives rather than in accordance with statutory requirements. While political influences were certainly not completely absent from the settlement of the rest of the old land claims, for example, Governor FitzRoy’s extensions and the

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1. Under Bell’s numbering system they are olc 906–911.

subsequent attack upon them by his successor Governor Grey, their intervention at least bore the appearance of being in accordance with the governing legislation. The tables also exclude information on purchases conducted under FitzRoy's pre-emption waiver proclamations, a category of land transaction that came to be closely associated with old land claims in subsequent investigations. Finally, claims after 1865 are excluded.<sup>2</sup>

We acknowledge that there are disadvantages associated with a primarily quantitative measurement as represented by these tables. This is particularly true of old land claims which, because they were based on the first 'purchases' conducted, often involved land of very good quality and location. Such characteristics do not come through in the statistical outcomes produced by these tables.

The second objective of these tables is to provide, in a single source, the most accurate information currently available with regards to the end result of each individual old land claim. For reasons which will be discussed in detail in the 'Organisation' section below, there are significant inaccuracies in the previous main repositories of collated old land claim information, that is, Bell's 1863 appendix to his 1862 report and the records of the 1948 Surplus Land Commission.<sup>3</sup> By consulting a wide range of sources, many of these inaccuracies have been corrected, with the result that these tables present as accurate a picture of the end result of the old land claims process as currently exists in a collated form. We acknowledge that the tables which follow are not completely accurate, that is, that as a result of more in-depth research into specific claims some of the figures will be subject to modification.

Finally, as will hopefully become clear in later sections, we acknowledge that a not insignificant portion of the information relating to old land claims will always remain uncertain. In particular, the absence of a compulsory survey requirement until the passage of the 1856 Act has created a situation where it is often extremely difficult to establish definitive data on many aspects of the old land claims process.

## **1.2 METHODOLOGY**

It is a feature of old land claims generally that the data relating to specific claims often changed considerably over time. This occurred both in terms of the range of data available, as well as to the accuracy of the data itself. The most important factor contributing to this sometimes dramatic evolution of data was the passage of the 1856 Act with its compulsory survey requirement. This increased the range of data available, allowing for the calculation of the exact area of each claim and of the presence and location of any surplus. The 1856 Act, and the surveys it

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2. The Wellington National Archives list 122 additional, that is, post-1865, claimants in its Preliminary Inventory No 9, 'Archives of the Old Land Claims Commission', olc 9
  3. Land Claims Commission, 'Appendix to the Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1863, d-14; *Report of the Royal Commission to Enquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown*, AJHR, 1948, g-8

prompted, also resulted in significant changes to the granted acreage figures as existing grants were called in and re-issued with more accurate acreages. The granted acreage figures had already been subject to much variation as a result of the fact that, during the 1840s, some claims experienced considerable fluctuation as the original recommendations of the commissioners were first extended as a result of Governor FitzRoy's intervention, and then sometimes reduced as a result of his successor's actions. Further complicating matters was the fact that the original commissioners' recommendations were themselves subject to considerable revision as a result of the failure of the 1842 Land Claims Amendment Ordinance to gain royal assent. While Bell's 1863 appendix managed to incorporate most, but not all, of the changes resulting from the two processes outlined above, the status of many claims continued to evolve after his appendix was published. In some instances, the opposition of local Maori caused alteration to previously surveyed boundaries. In a significant number of other claims, grants were eventually called in and the claim was declared to have lapsed. The result of this pattern of evolving data has been that it was necessary, in order to obtain the most accurate information possible, to draw from a wide range of sources.

The basic source of information for these tables has been Commissioner Bell's 1863 appendix to his 1862 report. This is for the simple reason that Bell's appendix provides the only easily accessible and complete listing of all old land claims. Thus, if no other source consulted during the collation of these tables contained any information upon a particular claim, Bell's appendix has been used. Within this category are all claims which never came before a commissioner, or which did not result in a recommendation being issued. Wherever a claim resulted in a grant or surplus, it has been attempted to verify Bell's information with another source. Where such verification has revealed a difference, the information from the second more recent source has often been preferred over Bell's. The reasons for this will be discussed in more detail throughout the 'Organisation' section below. For now, it is enough to mention that the major disadvantage of Bell's appendix is that it was published in 1863 and is therefore not inclusive of subsequent changes. Although such changes did not affect a large number of claims, the ones that were affected are none the less very significant as a percentage of those claims that did result in grants or surplus.

After Bell's 1863 appendix, the most important source used in the compilation of these tables were the records of the 1948 Surplus Land Commission. Also known as the Myers Commission, it was instituted to investigate whether any surplus land deriving from old land claims and pre-emption waiver purchases should, 'in equity and good conscience', have returned to the Maori vendors rather than becoming Crown land. The commission was assisted by staff from the Department of Lands and Survey and produced two types of relevant records.

Firstly, the assisting staff went through a large number of old land claim files and produced brief type-written summaries of their contents. Often less than five pages in length, these summaries, while certainly not providing a full indicator of the contents of each file, were nonetheless extremely useful with respect to providing

easy access to the type of data presented in the tables that follow. Unfortunately, the series is not a full one, that is, summaries were not prepared for all the old land claims.<sup>4</sup> Use of the summaries is indicated in the remarks column with their National Archives (Wellington) reference, ma 91/18–23.

The second relevant record created by the commission was a series of tabular summaries which presented a similar range of basic statistics to that contained in the tables that follow. In addition to this basic data, the commission's series also provide an impression of the chronological evolution of the specific statistics. Such a perspective is missing from the tables contained in this appendix which, instead, focus on the final outcomes of the old land claims process. As such, the commission's tabular summaries constitute a resource that may prove very helpful to researchers of specific individual old land claims who are unable to match the final figures contained in these tables with those produced by an earlier award. Once again, however, the tabular summaries do not constitute a complete listing of all old land claims, principally because of the commission's focus on the question of surplus lands. Information drawn from the tabular summaries is indicated by the reference, ma 91/9.

Another important source consulted in the collation of the tables in this report was an old land claim plan list prepared by Department of Lands and Survey staff apparently in the 1890s. The list is formatted as a numerical listing of old land claim plans held by the organisation now known as Land Information New Zealand, or LINZ. From these plans, the list provides acreage figures for surveyed, granted and surplus lands. Most importantly, the list provides a tool which facilitates much easier access to the plans themselves. As such, it can be used to access either the original plans themselves, which are located at the regional offices in Hamilton and Auckland, or alternatively, microfiche copies which are located at Heaphy House, Wellington. The plans have proved extremely useful in providing more accurate locational information for specific claims and for identifying features, such as reserves, which are neglected in other sources. Where information taken from the plans is reproduced in the remarks column, this is indicated by the reference, 'LS List'.

Two post-1865 reports contained in the Appendices to the Journal of the House of Representatives (AJHR) have proved particularly useful in identifying claims in which the grants, issued by Bell himself, were subsequently cancelled and the claim declared to have lapsed. Many of these claims are not covered by the records composed by the Surplus Lands Commission. This is particularly surprising since such land, having been found to have been the subject of a valid 'purchase' by the original 1840s Land Claims Commissioners, would seem at first glance to have been a prime candidate for the Crown to take possession of the land itself, as it attempted to do with 'surplus' land. Where individual entries in our tables have been altered on the basis of these reports, the remarks column will contain one of the following references: AJHR 1881 c-1; or AJHR 1878 h-26.

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4. There are 242 summaries covering about 350 claims, olc 9

Finally, in a small number of instances the original old land claim files have been consulted. Generally, however, this has been avoided because the files are often bulky and as such do not yield basic statistics easily.

### **I.3 ORGANISATION**

The tables in this appendix are organised to correlate with the 15 Rangahaua Whanui districts, the geographical boundaries of which are illustrated in figure 1. There are, however, no tables for the Chatham Islands or the Urewera district, both of which had no pre-1865 old land claims within their area. There is also no table for the Whanganui district because the single old land claim within that district was a New Zealand Company one. Following the 12 district tables, there is a summary table which, in addition to providing national totals, allows for easier comparison between the various districts.

Within each table itself, there are 11 distinct columns and these are discussed individually below.

#### **I.3.1 Claim Number**

This column adopts the numbering system established by Commissioner Bell in 1856 and which has been followed ever since. This system, which is listed in its entirety in his 1863 appendix, is different from that used when old land claims were first registered and investigated in the 1840s. Under the earlier system, the first claim of each claimant received a number, then any additional claims submitted by that claimant were assigned a letter. While maintaining the order of claims as they were originally numbered, Bell departed from the original system by discarding the use of letters and instead, each individual claim was assigned a number from a single consecutive numerical sequence; for example, whereas originally the three claims of J S Odeland were numbered 183, 183a, and 183b, under the Bell system they were numbered 356, 357, and 358. Bell's 1863 appendix provides for easy cross-referencing between the two numbering systems.

With the exception of the Auckland district table, each individual claim has its own line. In the Auckland table, just over one-fifth of the claims have aggregated entries, for example, W William's five Bay of Islands' old land claims, olc 529–534, all appear under a single entry. This aggregation has occurred because it has not been possible from the sources consulted to separate out the individual details of each claim. Predominantly, this has occurred as a result of claimants accepting a settlement, usually in the form of a Crown grant, in satisfaction of all their claims. While it may be possible for researchers concerned with a specific claim to obtain disaggregated figures by consulting the original Godfrey and Richmond reports, the time-consuming nature of this exercise has meant that it was not feasible to do this for all of the aggregated entries contained in these tables. Even if such a search is undertaken, there is no guarantee that it will reveal figures any more reliable or

specific than those aggregated ones provided here. An excellent example of this is James Busby's nine Bay of Islands' claims (olc 14–22), which have been the target of a considerable research effort by Dr Rigby but which have proved impossible to disaggregate.

### **I.3.2 Claimant**

These names are taken straight from Bell's 1863 appendix. In most instances, the claimants listed are those who participated in the original transaction. Some of these names are followed by others in brackets, the bracketed name being that of a derivative, that is, someone who subsequently purchased the claim from the original transactor, but this identification of derivatives has not been applied consistently. In a small number of instances, derivative claimants filed their own new claim, for example, Arthur Devlin's claim 961 is derived from a share of the land allegedly purchased by William Webster and covered by his claim 726. Generally, such derivative claims were automatically disallowed by the early commissioners in accordance with their March 1841 instructions that any decision regarding the validity of a purchase should not take into consideration any dealings subsequent to the original purchase. Where such derivative relationships exist, we have attempted to incorporate them into the remarks column.

### **I.3.3 Locality**

These are taken from Bell's 1863 appendix. While Bell required a survey of each claim before he issued a Crown grant, his locational information is often quite general. Where possible, Bell's location has been supplemented with something more specific. If, however, a claim lapsed, was disallowed, or resulted in a recommendation of 'No Grant', it is unlikely to have been surveyed with the result that it is often impossible to assign any more than a very general location to the claim.

### **I.3.4 Date**

Year or years stated by Bell as the date in which the original transaction occurred.

### **I.3.5 Area claimed**

The figures in this column are largely based on those given by Bell in his 1863 appendix. In the few instances where our figure is different from that given by Bell, our figure is taken from the records of the Surplus Land Commission. Where there is no figure given, that is because none was provided in the original statement of claim. Thus, the total figure of acreage claimed is actually less than it would have been if all claimants had provided an estimate for the size of their claim.

### **I.3.6 Surveyed**

This figure represents the actual area of the claim as it was eventually surveyed. This information has largely been obtained from Bell's 1863 appendix, but wherever possible we have checked it against the information provided by the original survey plans. The Lands and Survey plan list, and the records of the Surplus Land Commission, have also been used to disaggregate some of Bell's aggregated survey figures.

As already stated, Commissioner Bell required that a claim be surveyed before he issued a grant under the Land Claims Settlement Act 1856. Because so few claims were surveyed prior to that Act, the often considerable time lapse between the original 'purchase' and the eventual survey meant that the final boundaries may well have been different from those originally transacted. Whether this resulted in enlargement or 'shrinkage' of the transacted area depended on the individual situation. A clear example of the former would be Whytlaw's claim, olc 520, on the Kapowai peninsula in the Bay of Islands, although it is a bit unusual in that it was not surveyed until the 1890s.<sup>5</sup> In contrast, Te Kaingamata and Rai's attempt to exclude an area of kauri forest during the 1859 survey of the several old land claims located within the Orira Valley, Hokianga, provides an example of an attempt to shrink the area originally transacted.<sup>6</sup>

### **I.3.7 Granted**

The figures in this column represent the area of a claim that was eventually granted to a claimant. It is important to note that these figures evolved considerably over time. Grants initially issued on the recommendations of the commissioners in the 1840s were often called in and cancelled under the 1856 Act and subsequently issued for a more accurate area, as revealed by survey. These actions under the 1856 Act were reported in Bell's 1863 appendix. In a number of instances, however, these new grants were themselves eventually cancelled. An example of such a course of events is provided by S D Martin's grants deriving from the McCaskill claims at Hikutaia, olc 288–289. Martin's heirs were never able to take actual possession of the land conveyed in those grants and eventually received an equivalent in scrip as compensation in 1879.<sup>7</sup>

As a result of such changes, preference has been given to the figures provided by the Surplus Lands Commission, the Lands and Survey plan list, and, in particular, the 1878 and 1881 AJHR reports mentioned earlier. Where such post-Bell changes have been noted, it has been attempted to provide both a date, and a National Archives reference, in the remarks column. Occasionally, references for the actual crown grants held at Heaphy House, Wellington, have also been provided.

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5. Barry Rigby, 'Old Land Claims', in Rose Daamen, Paul Hamer, and Barry Rigby, *Auckland District Report*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), July 1996, pp 103–113

6. See the Hokianga scrip claims case study in this report.

7. See the McCaskill case study in this report, p 78

### **I.3.8 Scrip**

All the figures in the scrip column relate to payments in pounds. These payments were received by claimants who could use the scrip to buy Crown land elsewhere. The rate of exchange varied considerably, a product of the fact that when the ‘face value’ of scrip was inscribed in pounds, the scrip could be used at ‘land auctions’ run by the Crown. This was not always the case, as sometimes the ‘face value’ of scrip was expressed in acres. When this occurred, the holder of the scrip was limited to exchanging the certificate for the area inscribed thereon. As will be discussed in detail in the ‘results’ section that follows, the amount of land that the Crown received in exchange for these scrip payments depended on the individual circumstances of each claim.

For the same chronological reasons cited in the ‘granted’ discussion above, wherever possible the figures in this column have been taken from the records of the Surplus Land Commission in preference to Bell’s 1863 appendix.

### **I.3.9 Surplus**

The figures in this column are largely taken from the records of the 1948 Surplus Lands Commission. They differ, however, in one important respect. The commission adopted an unduly narrow definition of what constitutes ‘surplus’. In short, it chose to exclude from its calculations any surplus land that was included within the boundaries of any subsequent Crown purchase. In this way, it refused to classify as ‘surplus’ the balance remaining from Fairburn’s 1836 Tamaki purchase, olc 590, after Fairburn himself was Crown-granted 8055 acres. This was a very considerable area, estimated to be in the vicinity of 75,000 acres by the commission itself, a figure which includes the one-third of the original purchase that Godfrey and Richmond recommended be returned to Maori. Such an exclusion was clearly at odds with how the land was viewed by the Colonial administration of the 1840s, as evidenced by their unsuccessful attempt, in 1842, to grant Charles Terry 20,000 acres from the balance of the Fairburn purchase.<sup>8</sup>

The definition of surplus adopted for these tables is wider than that adopted by the commission. Two general criteria have been adopted for defining what constitutes surplus land. Firstly, surplus was any land that remained within a claim found to have been the subject of a valid ‘purchase’, after any land to be granted to the claimant had been taken out. Secondly, the area of surplus had to be surveyed and identified as such, for it to be included within our figures. The only exception to this second criteria was where the Crown claimed the surplus without first conducting a survey. The Fairburn purchase is a rare but significant example of this. Because of this, we have included it within our surplus figures, although, without a comprehensive survey, the 21,500 acre figure taken from the Surplus Land Commission’s summary is clearly inaccurate.

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8. See the Fairburn case study in this report, p 14

While wider than that of the Surplus Land Commission, the definition of surplus adopted for these tables is not as broad as that applied by Commissioner Bell. The result of this is that Bell's surplus figure is almost certainly over-inflated. Bell was willing to estimate how much surplus would be recovered by the Crown once a survey was completed. This approach had two fundamental flaws. Firstly, because claimants in a majority of cases exaggerated the total area of their claims, any estimate of the surplus based on the claimants estimation was likely to fall considerably short, that is, it was not unlikely that the granted acreage would absorb all of the claim, leaving no surplus, or one significantly reduced. A second major flaw with Bell's approach to surplus identification was that until a claim was actually surveyed, there was no way of knowing if the surplus would actually revert to the Crown. It may, for example, have had difficulty physically asserting its claim to the surplus due to the opposition of local Maori, particularly if the survey was delayed beyond 1857. James Kemp's claim at Waipapa, olc 595, graphically illustrates the problems that could arise when the Crown delayed enforcing its claims to the surplus.<sup>9</sup>

Because in these tables we have attempted to represent the end result of the old land claims process, these tables have adopted a definition of surplus different from that put forward by Bell and the Surplus Land Commission. The single most important reason for doing this was that cartographic definition, that is, identification through survey, was essential for effective recovery of surplus by the Crown. The one notable exception to this was the Fairburn surplus, which the Crown claimed without prior survey, and thus has been included within our figures.

Lastly, in his 1863 appendix Bell included as surplus, land gained as a result of scrip exchange. Such land has not been included within the definition of surplus used for these tables because the two categories of land, scrip and surplus, were products of distinct policies and therefore quite separate. Unfortunately, it has proved extremely difficult to quantify the amount of land gained through the scrip policy.

### **I.3.10 Plans**

There are three types of plans referenced in this column. Overwhelmingly, the plans are olc plans, that is, survey plans dedicated specifically to illustrating the acreage, boundaries, and location of the area covered by an old land claim. In a majority of instances, these plans were prompted by the compulsory survey requirement of the 1856 Act. As such, almost all old land claim plans show the *entire* area originally claimed. There are a few exceptions to this, such as olc plan 60, relating to the fore-mentioned Waipapa claim of James Kemp, which showed only the granted area, thereby excluding a considerable area of surplus land. Generally, however, olc plans show the location and extent of all component elements of the old land claim area, that is, the granted portion, any surplus remaining, as well as any other

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9. See Rigby, pp 91–99

features which are not always mentioned in other sources, such as Native reserves or Maori cultivations. As such, the olc plans constitute an extremely valuable resource. This is particularly so in relation to these last mentioned features, Native reserves and cultivations. Because plans often, but not always, represented the way the land was subsequently assigned to various parties, be they the claimants, Maori, or the Crown, they provide a very helpful reference of the extent to which Native reserves were in fact established, or cultivations excluded from the granted area. Specifically, they provide a handy means of checking whether any such provisions that may have been attached to the original Godfrey or Richmond recommendations were in fact observed. Conversely, the presence of Maori settlements or cultivations marked on a plan can indicate developments since the original hearing.

Like all sources, however, the olc plans must be consulted in conjunction with others. Some surveys were conducted without the consent of local Maori, raising questions about whether the boundaries, as surveyed, accurately reflected those originally transacted. This is particularly true if it is accepted, as argued in the main text of this report, that the original commissioners only made their recommendations in the expectation that such a consultative survey process would take place before grants were issued. Such surveys become colloquially known as ‘moonlight surveys’, an example being olc plan 114, which surveyed the claim of Lachlan McCaskill south of the Hikutaia Creek.<sup>10</sup> Some olc plans bear little relation to the actual reality upon the ground. Old land claim plan 249, for example, which purports to indicate the location of William Webster’s 1219 acre grant west of the Piako River, was not actually occupied at the time and was subsequently the subject of considerable conflict with local Maori who disputed that the area had ever been alienated.

As noted earlier, the original olc plans themselves are located at the LINZ regional offices in Hamilton and Auckland, while microfiche copies are held at Heaphy House, Wellington.

The other two types of plans referenced in this column are ml plans, which show blocks that have been through the Maori Land Court, and so plans, which are Survey office plans usually surveyed for Crown purchases.

### **I.3.11 Remarks**

This column has several functions. The single most important of these is to highlight where sources have indicated developments subsequent to the publishing of Bell’s 1863 appendix. The most common occurrence of this is where the Bell-issued grant has been cancelled, and the claim declared to have lapsed. In some instances, it has also been possible to state what then happened to the land, for example, that it then reverted to the Crown, or alternatively, to Maori. Another type of post-Bell development highlighted is where claims have been settled as a result

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10. See the McCaskill case study in this report, p 85

of the passage of special legislation, for example, the Green Land Claims Settlement Act 1870 by which Green was allowed to select 5000 acres in satisfaction of his nine South Island claims.

A second function of the remarks column is to provide a space for any non-statistical information which is important to an understanding of the final outcome of the claim. Examples of such information are where a claim has been included within the boundaries of a subsequent Crown purchase, where there are important linkages with other claims, or where the granted acreage is actually larger than the acreage of the claim, as determined by survey, because of the inclusion of a survey allowance.

The remarks column has also been used to record where there has been evidence of a Native reserve being established, an occurrence so infrequent that it did not justify its own column. Also indicated in the remarks column are those instances in which the surveyed area of a claim has reverted to the Crown, particularly as a result of a scrip exchange. As noted in the 'scrip' section above, however, this is not a complete listing of all the land which accrued to the Crown as a result of its scrip policy.

Finally, it needs to be noted that many of the terms used in the remarks column, for example, 'disallowed' and 'Reverted to Crown', are taken directly from the sources themselves even though, in some instances, the terms are misleading. Commissioner Bell, for example, uses 'disallowed' to describe all claims for which the 1840s commissioners recommended 'No Grant'. The grounds for such a recommendation may have been that the claimant concerned had already been recommended to receive more than the maximum prescribed under the 1841 Ordinance. An example of such a claim is olc 725, Webster's Great Mercury Island claim. While Webster's Mercury Island claim was eventually absorbed by later Crown purchases, often such claims were subsequently on-sold by the claimant, as a means of their gaining some benefit from the transaction, with the derivative subsequently being issued a grant upon meeting the survey requirements of the 1856 Act. The Surplus Land Commission's use of the term 'reverted to Maori' in the instance of olc 614, Rich's Bay of Islands claim, could also be construed as misleading. If commissioners found the claim to have been invalid, as implied by the term 'disallowed', then the land could not have 'reverted' to Maori because it was never validly claimed in the first place. Users of the tables need to be aware then, that the language used in the remarks column should not always be taken at face value.

## **I.4 RESULTS**

Before beginning to discuss the statistical outcomes of the tables, and the issues arising from them, it is important to reiterate that the tables exclude any data relating to the pre-Treaty transactions of the New Zealand Company. This seems necessary because, as will be seen shortly, the tables tend to portray old land claims

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as principally a phenomenon limited to the top third of the North Island and, in particular, to the area of the Auckland Rangahaua Whanui district. This is especially true in terms of the ‘end result’ of the old land claims process. While such an impression is a valid one, it is important to remember that in those southern districts where the New Zealand Company alleged to have completed purchases, the settlements made in satisfaction of those claims also had a significant effect.

### **I.4.1 Claimed Acreage**

The claimed acreage figures for each district are located in the second column of table 1 below. In an attempt to give the reader a better idea of the size of the area

District	Claimed (acres)	% of actual area	End result (granted and surplus)	% of claimed acreage	Claimed less ‘monster’	No of claims
Auckland	1,659,682	42	382,627	23	1,079,682	722
Hauraki	105,075	13	17,375	17	105,075	54
Bay of Plenty	18,226	2	14,510	80	18,226	12
Gisborne	111,076	5	1,382	1	11,076	28
Waikato	424,498	18	20,564	5	424,498	68
Volcanic Plateau	600	0	319	53	600	2
King Country (Rohe Potae)	82,214	3	500	1	82,214	25
Taranaki	21,823	1	0	0	21,823	4
Hawkes Bay/Wairarapa	1,228,005	20	0	0	5	6
Wellington	31,514	12	3,727	12	31,514	43
Northern South Island	1,323,580	39	2,663	0	43,580	32
Southern South Island	4,298,613	13	24,478	0	418,613	123
Totals	9,304,906	15*	468,145	5	2,236,906	1119

\* As a percentage of the total area of the twelve Rangahaua Whanui districts which had old land claims.

Table 1: Claimed acreage comparisons. These areas have been digitally calculated by the Tribunal’s mapping officer, Noel Harris, and are an estimation only.

represented by these figures, column 3 shows the claimed acreage as a percentage of the total area of each district.

Before discussing these figures it must be stated that, of all the categories of data collated in these tables, the total claimed acreage figures are arguably the least significant. Such a conclusion is supported by two factors.

Firstly, it is manifest that the total claimed acreage, based upon the individual estimates provided by the claimants themselves, bears little relation to the actual area of land covered by old land claims. As a quick survey of the individual entries in any of the district tables will reveal, for those claims for which we have survey figures, the acreage as estimated by the claimant in their original statement of claim clearly tended towards exaggeration of the actual area about three-quarters of the time. The effect of this trend upon the total claimed acreage figures would have been only slightly lessened by the fact that claimed acreage figures were not provided for approximately 28 percent of the claims.

What prompted this high level of inaccuracy and exaggeration? Manifestly, the complete absence of pre-1840 surveys made it difficult to come up with accurate figures. At the same time, however, there was undoubtedly a certain degree of deliberate inflation by claimants themselves, especially in a number of the smaller claims which, by virtue of their size, it might have been assumed were less likely to be prone to exaggeration of the actual size of the area being transacted. As the Hokianga scrip case study earlier in this report has shown, there was certainly personal gain to be had from such exaggeration if, upon recommendation by the investigating Land Claims Commissioner, a scrip exchange could be effected.

A second factor contributing to the insignificance of the total claimed acreage figures is the fact that they are not closely related to the eventual outcome of the old land claims process. In table 1 this 'end result' has been indicated in the fourth column which is a combination of the total area which eventually accrued either to claimants, through a Crown grant, or to the Crown as surplus. While, for reasons which will be discussed in the surveyed acreage section that follows, the actual 'end result' of the old land claims process is likely to have been larger than the areas given in column 4, it is still valid as a general indicator of the lack of correlation between the total claimed acreage, as estimated by claimants, and the eventual outcome of the old land claims process. As can be seen in column 5, at the district level only Auckland, Bay of Plenty, and the Volcanic Plateau experienced 'end results' which were larger than 20 percent of the total claimed acreage for their district. The extremely low level of correlation between claimed acreage and the end result in the remaining ten districts is evidenced by the fact that while nationally over nine million acres were estimated to be covered by old land claims, in the end only five percent of that area was eventually Crown-granted to claimants or recovered by the Crown itself as surplus.

The extent of the discrepancy between the area claimed, and that eventually granted to claimants or taken by the Crown as surplus, can largely be attributed to the 'monster' claims of a few individuals. For the purpose of this discussion, a 'monster' claim is defined as one whose claimed acreage exceeded 100,000 acres.

There were fourteen such claims registered under the terms of the 1841 Ordinance, with a combined total claimed acreage of just over seven million acres and an alleged total combined payment of £1885. As discussed in the Fairburn case study earlier in this report, these claims had an important effect upon the formulation of the Colonial Office's policy with respect to pre-Treaty purchases. The Colonial Office feared that if large areas of the prospective colony had already been alienated to a few individuals by Maori, this would have a highly detrimental impact upon the future prosperity of the colony. To avoid this, 2,560 acres was established as the maximum that could be granted to a single individual, with the balance of any claim found to have been the subject of a valid purchase reverting to the Crown as surplus. Thus, in addition to protecting the future interests of the colony, the Colonial Office was hopeful that the establishment of a 2560 acre maximum would also create a considerable surplus which could be used to fund the future administration of the colony. In this, the Colonial Office was to be deeply disappointed. In nine of the monster claims the claimant failed to appear, in yet another commissioners recommended 'No Grant', while the remaining four were settled for a total payment of £3,060 scrip and a single 695 acre grant. The Crown recovered no surplus from any of these 'monster' claims.

Clearly, the 'monster' claims were never going to stand up to close scrutiny. As such, their inclusion within the total claimed acreage figures has a serious distorting effect. To allow a more 'realistic' comparison between the total claimed acreage and the end result of the old land claims process, column 6 in table 1 shows the total claimed area for each district minus the area of the 'monster' claims. Of course, such an adjustment is not to deny that there were many smaller claims that would prove to be equally spurious, but that they did not have the hugely distorting effect upon the results which inclusion of the 'monster' claims does.

Several conclusions can be drawn from the adjusted figures in column 6. Firstly, even minus the 'monster' claims there is still a low level of correlation between the area claimed and the area eventually granted or claimed as surplus. Only Auckland, the Volcanic Plateau, and the Bay of Plenty, experienced an 'end result' equivalent to more than a third of the area originally claimed. This is reflected at the national level where the 'end result' was only 21 percent of the area claimed, a ratio which is significantly boosted by the figures for the Auckland district which account for just over 48 percent of the total national claimed acreage. If Auckland is omitted from the national totals, the ratio between the area eventually granted or claimed as surplus and that originally claimed falls to 7 percent, a third of the Auckland-inclusive figure.

A second conclusion which can be drawn from the adjusted figures in column 6 is that those districts facing the largest potential alienation from old land claims – depending, of course, on whether all those claims were upheld by Godfrey and Richmond – were Auckland, Waikato, and the Southern South Island. This excludes Hawkes Bay/Wairarapa and the Northern South Island, two districts which had previously figured prominently in the unadjusted claimed acreage figures as shown in column 2.

This ranking is confirmed by column 7, which shows the number of individual claims within each district. Here again, only Auckland, Waikato, and the Southern South Island register more than 60 individual claims. Given that of the 1119 individual claims, only 174, or sixteen percent, claimed areas larger than the 2560 acre maximum set by the 1841 Ordinance, counting the number of individual claims seems a particularly good measure of the extent to which a specific area was potentially affected by old land claims. This is doubly so since of the 174 claims larger than 2560 acres, all but 25 were in the Auckland, Waikato, and Southern South Island districts.

But arguably the most striking finding which can be drawn from the adjusted figures in column 4 and those in column 7 is the dominance of the Auckland district. As mentioned earlier, on its own the Auckland district accounts for just under 48 percent of the total adjusted claimed acreage,<sup>11</sup> and sixty-seven percent of individual claims. When this area is enlarged to include the adjoining districts of Hauraki and Waikato, the percentage increases to 72 percent of the total adjusted claimed acreage and 75 percent of the individual claims.

The Auckland district's dominance of the old land claims statistics is a trend that intensifies in the other categories collated in these tables. That this is the case is not all that surprising given that the region north of the Waikato River mouth was the area that experienced the most intensive level of European contact prior to annexation. Furthermore, this would seem to have had a 'flow-on' effect which helps account for the high level of claims in the adjoining Waikato and Hauraki districts.

#### **I.4.2 Surveyed acreage**

As has already been mentioned in the previous section, at the level of specific claims, the surveyed acreage figures are important for their exposure of the degree to which claimants were prone to exaggerate the size of their claims. In a clear majority of those claims which were eventually subject to survey, claimants significantly over-estimated the size of their claims. The degree and frequency of that exaggeration exceeds a level which might be reasonably explained by the total absence of any surveys at that time.

Before beginning to discuss the surveyed acreage totals at a district level, it is necessary to establish exactly what those totals include. The first point that should be made about the surveyed acreage totals is that they do not represent a figure for the actual, as opposed to claimed area, of *all* old land claims. Such a figure is simply not obtainable because of the fact that not all old land claims were surveyed. Claims for which the early commissioners recommended 'No Grant', or which were never fully investigated, for example, if the claimant failed to appear, were generally never surveyed. This was a result of the fact that most surveys were

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11. That is, the total claimed acreage adjusted to exclude the 'monster' claims.

prompted by the survey requirements of the 1856 Act which was primarily targeted towards giving 'defective' 1840s grants full legal effect.

Nor does the total surveyed acreage figure represent the total area found by the commissioners to have been the subject of valid pre-Treaty 'purchases'. There are several reasons for this. Firstly, not all areas found by the commissioners to have been the subject of a valid 'purchase' were actually surveyed. An example of this is William Webster's claim to Great Mercury Island, olc 725. Although Webster claimed to have purchased the entire island, Commissioner Godfrey reported in August 1844 that Webster had in fact purchased only two much smaller areas upon the island. As Webster had already received the maximum acreage in other recommendations, Godfrey declined to recommend that he should also receive grants for these two smaller areas. Because the 1856 Act which prompted most surveys targeted existing grants, these two areas escaped its focus and do not seem to have ever been identified distinctly by survey.

An even more significant example of a validated 'purchase' escaping survey is William Fairburn's Tamaki claim, olc 590. Originally estimated at 40,000 acres in Fairburn's statement of claim, Surplus Land Commission staff subsequently estimated the area affected as 83,000 acres. The only survey that was ever undertaken, however, related to but a small portion of this area, specifically, the 8055 acres eventually Crown granted to Fairburn himself. The remaining 74,892 acres, approximately 27,700 acres of which were meant to be returned to the Maori vendors, were claimed by the Crown as surplus land but never actually surveyed as such. Thus, the larger area of the claim is not included within the survey totals of the Auckland district.

It is extremely difficult to quantify the extent of subsequent Crown purchases in old land claim areas from the sources consulted during the compilation of these tables. The major barrier to such a calculation is the already mentioned problem of the language used by Commissioner Bell in his 1863 appendix. Specifically, Bell's use of the term 'disallowed' fails to distinguish between those claims which failed to produce grants for reasons of, say, Maori opposition, and those which failed because the claimant had already exceeded the 2560 acre maximum. Because Bell's use of this particular term was copied in subsequent sources, the only way to determine the extent of the problem would be to check each individual claim classified by Bell as disqualified against the original Godfrey and Richmond report. While this would provide an indication of the extent of the problem, it would not yield an accurate figure for the total area found to have been alienated by the commissioners because, as already stated, not all the areas so found were subsequently surveyed.

Despite the points highlighted above, the surveyed acreage figure is nonetheless a highly significant one. The principle reason for this is that it was the act of surveying that gave actual effect to the investigations of the original commissioners. Until an area was surveyed, it could not be stated with certainty that it would actually be alienated, even if it had been the subject of an earlier

commissioner's grant recommendation. But once surveyed, it was rare for a claim to subsequently avoid effective alienation and revert to the original Maori owners.

The significance of the survey to the end result of the old land claims process is most apparent in the instance of surplus lands. While the Crown maintained that any land remaining within an investigated claim, after the claimant had received a grant, was Crown land, it was generally unable to give physical effect to this assertion until the land was surveyed. This was because it remained unaware of the existence of such 'surplus', or more typically, because it was unable to locate the surplus within the exterior boundaries of a claim. Until such a survey was carried out, any surplus present remained available for both resident claimants and Maori to utilise, perhaps without even an awareness of the existence of the Crown's claim.

If a claim was never surveyed, then the land typically reverted back to Maori with the exact owners eventually being determined by referral to the Native Land Court. Any such determination by the court also served to give legal recognition to the fact that the Crown's claim to the surplus had lapsed. Although not frequent, this did occur often enough to be listed alongside surplus land areas on Auckland roll plan 33.<sup>12</sup> Drawn after 1882, and covering the region north of Whangarei, the plan shows the location of six blocks that had passed through the Native Land Court in this manner. Unfortunately, it is not possible from the plan to match up the blocks to a specific old land claim number. One such example, however, would seem to be the Tutukaka claim of Black and Green, olc 925, which the Surplus Land Commission summary files show as resulting in a 1560 acre grant to the claimant, with a further 2370 acres reverting to Maori.

But once a claim was surveyed, and the location and extent of any surplus it contained positively identified, then it was unusual for the Crown's ownership of that surplus to be successfully challenged. This was because once the Crown was able to cartographically define the extent of its surplus holdings, it could use the resultant olc plan to issue Crown Grants over a precisely-defined area, grants which carried with them the full force of European law.

Surveying was equally as important to the final outcome of scrip exchanges as it was for surplus. When the Crown issued scrip in exchange for title over land 'sight unseen', there was a risk that the actual area upon survey would prove to be considerably less than the area as estimated by the claimant. Arguably even more significant was the fact that if it failed to survey the land soon enough, it might not acquire any land from the exchange. An example of this is Hannekin's Coromandel claim, olc 226. Investigated by the early commissioners who recommended a grant for 406 acres, Hannekin exchanged his grant for £406 scrip in 1844. The Crown, however, failed to survey the claim with the result that, as the 1948 Surplus Land Commission summary file notes, it must be assumed that it 'reverted to Maori'.<sup>13</sup>

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12. Roll plan 33, Auckland Roll Plan series, Land Information New Zealand (LINZ), Auckland. I am indebted to Barry Rigby for this reference.

13. ma 91/10, series 6

The surveying of a claim was also often indicative of the extent to which the Crown would be able to ensure compliance or acceptance of its own grants. If there was going to be serious opposition from local Maori to the issuing of a grant upon the basis of a commissioner's recommendation, then this opposition often emerged at the time of a survey. This was because surveys were sometimes the first tangible indication of the extent, or sometimes even the presence, of a competing claim to title over the land concerned. The non-completion of a survey because of such opposition, as in the case of C Baker's Mangakahia claim, olc 547, was usually an excellent indication that the Crown was not going to be able to enforce the grant and that it would be forced into compensating the claimant by other means. There were some instances, however, where the Crown, having managed to complete its survey despite interruption by local Maori, was subsequently forced into abandoning the full extent of its grants. William Webster's Point Rodney claim, olc 722, and Lachlan McCaskill's Ohinemuri claim, olc 287, are both examples of claims in which this occurred. But in the overwhelming majority of cases, completion of a survey served to confirm, and make unassailable, alienation of the land in question.

It should be clear then, that while the surveyed acreage figures represent neither the actual area of all claims, nor the actual area found by the commissioners to have been the subject of a valid purchase, they are nonetheless very important because they provide perhaps the best measure of the extent of effective alienation likely to have occurred as a result of the old land claims process. This is not immediately apparent from an examination of table 2 below. Column 3 of that table brings together the surveyed acreage figures from the various districts tables, while in column 5 are the combined totals, by district, for the area alienated from Maori through Crown grants or as surplus land. Of the five districts with surveyed acreages of greater than 10,000 acres, only one, the Bay of Plenty, has a comparable 'end result' acreage. The apparent discrepancy between the table and the argument advanced for the importance of the surveyed acreage figures can be explained by examining the granted and surplus categories as well as the distorting effect of certain atypical claims.

Most noticeably, there is a considerable difference between the Auckland district's surveyed acreage and that eventually granted to claimants or taken by the Crown as surplus. This gap is misleading, however, in that 120,000 of the 152,000 acre difference can be attributed to a *single* claim, olc 23, James Busby's Waipu claim. At Waipu, Busby deliberately surveyed an area several times larger than that which he had originally claimed. By doing so, he hoped to pressure the Colonial authorities into recognising the full extent of his 25,000 acre 'purchase'. While Busby eventually received £22,600 scrip in settlement of this particular claim, the Crown felt unable to assert title over the land at Waipu because the commissioners had recommended 'No Grant' when Busby produced only a single Maori witness

*Methodology and Tabular Summaries of Old Land Claims*

District	Claimed (adjusted for 'monster' claims)	Surveyed (acres)	% of actual area	End result (granted and surplus)
Auckland	1,079,682	535,185	13	382,627
Hauraki	105,075	24,459	3	17,375
Bay of Plenty	18,226	15,579	1	14,510
Gisborne	11,076	1356	0	1382
Waikato	424,498	39,044	2	20,564
Volcanic Plateau	600	318	0	319
King Country (Rohe Potae)	82,214	501	0	500
Taranaki	21,823	0	0	0
Hawkes Bay/Wairarapa	5	0	0	0
Wellington	31,514	3138	0	3727
Northern South Isd	43,580	2513	0	2663
Southern South Isd	418,613	12,587	0	24,478
Totals	2,236,906	634,680	1	468,145

Table 2: Surveyed acreage correlations

to support his Waipu claim.<sup>14</sup> The land was later obtained through three Crown purchases.

The remaining 32,000 acre difference between what was surveyed, and that which was eventually granted or claimed as surplus, can be attributed to two 'end results' other than grants or surplus. The first of these is scrip exchanges which, with the exception of some of the Hokianga scrip surveys which have proved difficult to disaggregate, have been included within the surveyed totals. As highlighted earlier, once surveyed, it was highly unusual for scrip land to revert back to Maori. There is, however, no distinct 'land accruing to the Crown from scrip' column within the tables, with the result that such land is missing from the 'end result' category. Instead, we have added 'scrip land' acreage to the remarks column. Consequently, the absence of a scrip acreage column contributes to the difference between the two sets of figures.

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14. On the same basis they recommended 'No Grant' for his 15,000 acre Whangarei claim. Godfrey and Richmond reports, 27 May 1842, olc 1/14-24.

The second ‘end result’ which contributes to the difference between surveyed acreage and that eventually granted or claimed as surplus is where a claim has been declared lapsed and the Bell-issued grant called in. In such instances, the surveyed acreage sometimes reverted to the Crown, for example, Johnson’s Paroa Bay claim, olc 249, and it sometimes reverted back to Maori, for example, Wood’s Waikare claim, olc 536. In most instances of lapsed claims, however, it is simply unclear exactly what happened to the land which was surveyed. An example of this is Spicer’s four acre claim at Kororareka, olc 436. Summarising the current state of knowledge about the claim in 1948, the Surplus Land Commission summary merely noted that Bell annulled the grant and that the claim was subsequently declared abandoned by Commissioner Heaphy on the 1 March 1880. Overall then, with the single exception of Busby’s Waipu claim, the effect of which is partially counterbalanced by the combined exclusion of the surplus from William Fairburn’s Tamaki purchase, olc 590, and the non-disaggregated Hokianga scrip surveys, the surveyed acreage would seem to give a reasonably close figure to the area likely to have been alienated as a result of the old land claims process.

A very similar pattern to that of Auckland is repeated in the Hauraki district, that is, a single claim accounts for a significant portion of the difference between the surveyed acreage and that eventually covered by grants or surplus. This was the claim of the McCaskill brothers at Ohinemuri, olc 287, in which local Maori had initially interrupted the survey before allowing it to proceed on the grounds that it would not prevent them from airing their grievances at a later hearing with Commissioner Bell. Such was the strength of their opposition at that later hearing, that Bell did not feel able to issue grants for the entire area surveyed, hence the discrepancy.

At the other extreme, the Southern South Island district shows an ‘end result’ which significantly exceeds that of its surveyed area. This is largely a result of a number of ‘settlements’ under which claimants received a payment in scrip and granted acreage in satisfaction for all their claims within the island. An example of this is the 1868 John Jones Land Claims Settlement Act, under which Jones was granted 17,028 acres and received £8050 scrip in final settlement of his six claims, olc 251–256.

This leaves Waikato as the only district from amongst the top five, in terms of surveyed acreage, which defies explanation as to the causes of the difference between its total surveyed acreage and that eventually granted to claimants (it produced no surplus). Indeed, it truly does present something of an anomaly as evidenced by the fact that most of its surveyed and granted acreage is contained within the claims of three individuals, each of which seem to defy the existence of any relationship between the surveyed and granted figures. Old land claim 143, Cormack’s 16,000 acre Piako claim, is another of those unusual cases where the large area surveyed did not result in an equivalent in grants because of the resistance of local Maori. Conversely, William Webster’s 80,000 acre Piako claim, olc 726, suffered the same type of opposition but produced an opposite effect, that is, a small surveyed area greatly exceeded by the area conveyed in Crown grants.

Finally, the six claims of Marshall, olc 320–325, resulted in several grants totalling 1986 acres which required no survey because his claims lay within the Waikato confiscation boundaries.

The vexing case of Waikato aside, table 2 can be seen to support the argument that the surveyed acreage figures are significant because they represent the best available measure of the probable extent of effective alienation as a result of the old land claims process. They certainly provide a much more meaningful measure of the probable result of the old land claims process than the primarily mathematical calculations which characterised the figures of either the Surplus Land Commission or Bell's 1863 appendix. Both these sources include within their calculations areas which, until they were surveyed, could not have gone to either the Crown or to claimants. With this in mind, what other conclusions can be drawn from the information presented in table 2?

The low level of correlation between the acreage as claimed, even when adjusted to exclude the 'monster' claims, and that eventually surveyed, confirms the trend previously highlighted in table 1 which compared the claimed acreages with the 'end result' as measured by the combined total of the granted and surplus acreages. While the surveyed acreage figures are, in some instances, larger than those used to represent the end result in table 1, the only resulting change to the conclusions drawn earlier is that the Hauraki district joins Auckland, Bay of Plenty, and the Volcanic Plateau as areas where the area likely to have been effectively alienated was greater than 20 percent of that originally claimed. One must be careful, however, when extrapolating the exaggeration clearly evident at the level of specific claims, to the district level because, as discussed at the very beginning of this section, the surveyed acreage figures do not represent the actual area of all claims, or even of those which Commissioner Bell found to have been the subject of a valid 'purchase'.

Easily the most striking aspect of table 2 though, is the perspective provided by column 4 which shows the surveyed acreage as a percentage of the total area of each district. With the exception of Auckland (and the New Zealand Company districts), no district experienced a probable rate of alienation from old land claims greater than three percent. This was reflected in an overall national percentage of almost exactly one percent. On the grounds of this purely quantitative analysis, it would not seem unreasonable to state that outside of Auckland, the probable alienation from old land claims did not have a huge impact. Such a conclusion is supported by the degree to which the Auckland district dominates the surveyed figures when measured purely in terms of total acreage surveyed. At 535,185 acres, more than ten times its closest rival, Auckland accounts for 84 percent of the national total. This represented 13 percent of its own actual area, a significant figure to have been alienated before the signing of the Treaty of Waitangi.

Of course, at this point it must be recognised that such a purely quantitative measurement of the impact of probable alienation as a result of old land claims gives no indication of the importance of non-quantitative factors such as the location and quality of the land alienated. Such factors were particularly important,

for example, in the old land claims of the Hauraki district which were in most instances located on land which was either adjoining a natural harbour, or which was flat and cultivatable. Given the predominantly hilly nature of the Coromandel Peninsula, old land claims within the Hauraki district almost certainly had an effect disproportionate to their total area. An even better illustration of the need for consideration of qualitative factors when considering the impact of old land claims is provided by the Auckland district. While experiencing an overall probable alienation rate of 13 percent, this alienation was not evenly spread across the entire district. Rather, old land claims were often concentrated within a specific area, for example, the Bay of Islands, with the result that the impact of old land claims within those specific regions was considerably greater than might otherwise be implied from the regional average.

A purely quantitative analysis such as the one undertaken earlier also ignores potential issues of natural justice, for example, when the land granted as a result of an old land claim was in fact never validly purchased in the first instance. An excellent example of this is the 1354 acres granted as a result of old land claims in the Gisborne district. Amounting to less than half a percent of both the national granted acreage, and the total area of the district, they nonetheless represent a considerable injustice given that many of the grants were issued after a manifestly inadequate investigation and under highly questionable statutory authority.<sup>15</sup> More typically, as the Webster case study earlier in this report highlighted, the original commissioners, Edward Godfrey and Mathew Richmond, were far from infallible with regard to their recommendations and findings. This was particularly true with regard to the extent of the area purchased as the result of an old land claim. We have argued in the main text of this report that, to their credit, they were well aware of the shortfalls of their investigations when unaccompanied by survey. The commissioners made their recommendations in the expectation that the written boundary descriptions contained in their reports, and usually taken verbatim from the deed, would receive precise measurement by survey before a grant was issued. This was because, to quote once again the commissioners themselves: ‘owing to the inaccuracies of the description of the boundaries in the deeds exhibited to us, we have seldom been able to point out, exactly, the actual situation and extent of the land claimed. The Native Sellers can alone shew the boundaries to the Surveyors’.<sup>16</sup> This expectation on the behalf of the commissioners is further evident in the fact that they usually concluded their recommendations with a statement of who, among the Maori witnesses, could participate in such an exercise of boundary identification. With Governor FitzRoy’s waiving, in January 1844, of the survey requirement implied in section 9 of the 1841 Ordinance, this expectation went

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15. For example, many of those claims which resulted in grants being issued by the Poverty Bay commissioners in 1871, would have been automatically disallowed under any of the preceding old land claims legislation because they had occurred after the signing of the Treaty of Waitangi. For more details of these occurrences, see chapter 2 of Sian Daly, *Poverty Bay*, Wellington, Waitangi Tribunal Rangahaua Whanui Series (working paper: first release), February 1997.

16. Commissioners to Colonial Secretary, March 1843, olc 8/1, pp 61–62

unfulfilled. It remained that way in the large majority of cases until the passage of the 1856 Act with its compulsory survey requirement and considerable incentives in the form of ‘survey allowances’.

Of course, it has been argued in this section that until a claim was surveyed there was no certainty that it would actually be alienated, but that once it was, it was very unusual for that alienation to be successfully challenged. Such a contention makes the question of whether Maori participated in the survey process, as clearly envisaged by the original Land Claims Commissioners, an extremely important one. As we have argued in the main text of this report, there is very little documentary evidence to show that Maori did participate in the survey process. Even where such consultation was attempted, serious questions arise about the manner in which it was undertaken. The Hokianga scrip surveys, subject of a case study earlier in this report, are an excellent example of this.

### **I.4.3 Granted**

The granted acreage figures, shown in column 2 of table 3 below, continue the trend evident in the previous section, that is, the Auckland district’s dominance of the outcomes of the old land claims process. At 241,824 acres, the Auckland district accounts for 75 percent of the national granted acreage. Waikato and the Southern South Island are the only other districts to have a granted acreage in excess of 20,000 acres, with Hauraki and the Bay of Plenty being the only remaining districts with a granted acreage greater than 10,000 acres. The Auckland district’s dominance is confirmed when measured in terms of the number of individual claims resulting in a grant being issued, indicated in column 3. Indeed, it actually increases slightly with Auckland’s 372 grant-recipient claims representing 81 percent of the national total.

A much more interesting series of results, however, is obtained when the number of claims resulting in grants is compared with the number of claims originally registered in each district. These original claims are tallied in column 7 of table 1, with the percentage of those claims resulting in grants shown in column 3 above. Such a comparison provides an imperfect measure of the degree to which old land claims were validated as a result of the investigations of the original Land Claims Commissioners. If commissioners recommended or ordered a grant, then this generally indicated that they investigated the claim and found it have been the subject of a valid ‘purchase’. There were few exceptions to this rule, although the 1871 Poverty Bay commissioners’ grants illustrate that this was not always the case. Another imperfection in such a measure is that not all investigated claims resulted in a grant as indicated in these tables. There were two main ways in which this occurred. Firstly, as a result of the 2560 acre maximum imposed by the 1841 Ordinance, commissioners sometimes declined to recommend that a grant be issued despite accepting evidence of an original alienation. Secondly, sometimes they recommended a grant but later Bell cancelled it and declared the claim to have lapsed. Such a grant would not have been included within the granted acreage

figures because these tables attempt to record the end result of the old land claims process.

The result of these exceptions is that the figures in column 4 of table 3 actually under-estimate the number of claims found by the commissioners to have been the subject of a valid 'purchase'. Bearing this in mind, the figures nonetheless provide an indication of an interesting trend. While at a national level 41 percent of the original claims resulted in a grant being issued, this rate hides a clear geographical division. Specifically, with the exception of the Waikato and Rohe Potae districts, those districts located north of Lake Taupo register a ratio much higher than those districts located south of Lake Taupo. In particular, in the Southern South Island district only 22, out of the 123 claims originally filed, resulted in grants. This amounts to a rate of 18 percent.

What conclusions can be drawn from this dichotomy? Can it be stated that the low ratio of grant-recipient claims to that originally lodged is indicative of a high level of 'unrealistic' claims, that is, claims that were never likely to receive validation under the terms of the 1841 Ordinance? An examination of the district tables of Wellington and the Southern South Island, being those southern districts with the largest number of filed claims, would suggest that the answer to this last question was a definite 'yes'. In those districts, most of the claims which did not result in a grant did so on the basis that a commissioner never investigated them, mainly because the claimant failed to appear.

Such a conclusion is slightly more problematic for the Northern South Island. Commissioners Godfrey and Richmond never visited the Northern South Island. It is possible therefore, that the prospect of having to travel a considerable distance to appear before a commissioner discouraged legitimate old land claimants prosecuting their claims. The ratio of grant-recipient claims to those originally lodged in the Northern South Island may be further distorted by the fact that the provincial legislature operated a scheme under which old land claimants were able to repurchase their claims at a set price.

Caution is also required before drawing a definite conclusion on the level of 'unrealistic claims' in the Waikato district, the one northern district with a large number of claims filed from which few grants resulted. This uncertainty is largely a result of the fact that approximately half the entries for that district carry a Bell-authored 'disallowed'. As indicated earlier in the remarks section, it is impossible to know, without consulting the original old land claim file, whether this means it was actually disallowed or whether the commissioners declined to recommend a grant for some other reason.

As already mentioned, recommendation of 'No Grant', despite evidence supporting an original alienation, sometimes resulted from the statutory grant acreage limit. In a number of instances, FitzRoy subsequently reversed such recommendations and issued grants. Indeed, three such claims are the subject of case studies in this report. As shown in those case studies, the effect of this process was that the Crown granted claimants a total acreage well above the statutory limit. Column 5 of table 3 documents exactly how frequently this occurred.

*Methodology and Tabular Summaries of Old Land Claims*

District	Granted (acres)	No of claims*	% of all claims	> 2560 (claimants)†	Scrip (£)	No of claims
Auckland	241,824	372	51	30	129,946	99
Hauraki	17,327	22	41	3	4003	6
Bay of Plenty	7725	3	25	1	853	1
Gisborne	1382	13	46	0	0	0
Waikato	20,564	10	15	0	2049	2
Volcanic Plateau	319	1	50	0	0	0
King Country (Rohe Potae)	500	4	16	0	0	0
Taranaki	0	0	0	0	0	0
Hawkes Bay/Wairarapa	37	1	17	0	2560	1
Wellington	3727	10	23	0	4972	3
Northern South Isd	2663	3	9	0	70	1
Southern South Isd	24,478	22	18	3	8500	1
Total	320,546	461	41	37	152,953	114

\* It is necessary to point out that these figures are unlikely to be completely accurate because of the aggregation of some of the claims into a single entry. Where an entry has been aggregated, and that entry includes a granted acreage, it has been assumed that *all* the claims covered by that entry resulted in grants and they have been counted as such. For many of the larger aggregated entries, however, it seems unlikely that they all resulted in grants although some are likely to have come pretty close. The same approach has been adopted when counting the number of individual claims involving scrip.

† These figures treat the claims of the Church Missionary Society, and Church Missionary Society families, as a single individual claimant.

Table 3: Claims resulting in grants or scrip being issued

In interpreting this data, it is important to remember that there were a variety of ways in which the Crown could ‘extend’ grants. Some claims, for example, that of Abercrombie, Nagle, and Webster to Great Barrier island, olc 36, were large enough to produce three grants in excess of the 1841 maximum. At the other extreme, the Crown sometimes issued a single extended grant in satisfaction of a number of claims, for example, Henry Williams’ five Bay of Islands claims, olc 521–524. The beneficiaries of most of these extended grants, however, derived them from a single claim. Overall, extended grants represented quite a small proportion of those claims which resulted in grants, just over 7.5 percent, and less than one percent of all claims. On the other hand, claimed acreage exceeded the

statutory maximum in 16 percent of the total number of claims. All but seven of the 37 claims resulting in extended grants were situated within the Auckland district. Auckland also accounted for seven of the eight claimants who received grants with a combined area of greater than 10,000 acres.

#### **I.4.4 Scrip**

Scrip played an important role in the old land claims process. Originally established by Governor Hobson in 1841 as a means of concentrating European settlement in order to be able to provide better protection for settlers and to vacate potential trouble spots, it subsequently grew to produce a range of different outcomes.

A feature of these later outcomes was that the Crown anticipated that it would gain land in exchange for its issuance of scrip. An example of this is the fore-mentioned Hikutaia grants of S D Martin. These grants eventually resulted in the issuance of scrip in compensation because the Crown, as a result of opposition by local Maori, was not able to make effective its own grants. Scrip issued in this manner provided an alternative to the other approach often adopted in such situations, that is, the Crown purchasing of areas already covered by grant recommendations. William Webster's Piako claim, olc 725, is an example of this.<sup>17</sup> The Crown also did not anticipate that it would gain much land when it issued scrip as part of a general 'settlement' of a particular individual's claims. The Waipu claim of James Busby, also mentioned earlier, is a graphic example of this. The Crown had already conducted three separate Crown purchases for the 120,000 acres covered by that claim when it paid out £22,600 scrip to Busby in settlement of his interest.

Predominantly, however, the Crown believed that it would recover land in return for its issuance of scrip. The Crown usually issued scrip at the rate of £1 for every acre recommended by Godfrey or Richmond, and it fully expected to recover an equivalent acreage. Of course, the Crown's policy was seriously flawed in this respect, as the lands exchanged for scrip were not surveyed for a considerable period. This resulted in the Crown recovering less land than anticipated for two reasons. Firstly, the surveys often revealed that the claimants had exaggerated the actual area of their claim with the result that the amount accruing to the Crown was considerably less than anticipated. The Hokianga scrip claims, subject of a case study in this report, are the best example of this. Secondly, in some instances, the gap between the original investigation and the eventual survey was too long so that the area concerned actually reverted to Maori, either because its boundaries could no longer be identified, or Maori now disputed the original transaction. Peter Monro's claim at Hokianga, olc 339, is possibly an example of this last result. An 1878 AJHR return notes that when Monro's claim was eventually surveyed in 1870, local Maori 'permitted [the] survey of only 95 acres'.<sup>18</sup> Such a comment implies that the actual area was in fact larger than this, rather than it just being a

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17. See the Webster Case study in this report, p 46

18. 'Land Claims Finally Settled', AJHR, 1878, h-26, p 4

case of Monro exaggerating the area of his claim in his original estimation. The Atherton, Kelly, and Whitaker's Tutukaka claim, olc 543 is an example of a scrip claim in which the land did not accrue to the Crown because it failed to survey the area soon enough. Atherton and his fellow claimants received £1005 scrip in 1844. Bell's 1863 appendix contains the comment that in light of this payment the 'land [is] ordered to be taken possession of'.<sup>19</sup> The records of the 1948 Surplus Land Commission, however, record that the land went 'unsurveyed. Reverted to Maoris'.<sup>20</sup>

The scrip totals for each district are summarised in column 6 of table 3 above. The totals represent payment in pounds. What is missing is a distinct column showing exactly how much land the Crown was able to physically recover, through its positive identification as a result of survey, as a result of its issuance of scrip. While the acreage eventually surveyed by the Crown has been indicated in the remarks column for some of the claims, it has not been done consistently. Several factors contributed to this omission, with the most significant being that, like many of the 'lapsed' claims, it is not always clear exactly what happened to the land involved in scrip exchanges.

Bearing this rather unfortunate omission in mind, the principal observation which can be made about the scrip figures deriving from the district tables is that the issuance of scrip was largely an Auckland district phenomenon. The Auckland district accounted for 85 percent of the scrip issued nationally. Its closest rival was the Southern South Island which, with a scrip total of £8500, accounted for six percent of the national total. Auckland is equally as dominant when the level of scrip is measured in terms of the number of individual claims in which scrip was issued. Under this same measure, Hauraki, rather than the Southern South Island, comes a very distant second.

The Auckland district's dominance of the scrip statistics, while reflecting Auckland's dominance of old land claims generally, can also be attributed to the policy goal for which scrip was first established, that is, concentration of European settlement around Auckland with title over the land originally purchased elsewhere transferring to the Crown. This is reflected in the fact that in most of the instances where scrip was issued outside of the Auckland district, it was done so for purposes other than exchange of title, that is, as a form of compensation or in satisfaction of a number of claims belonging to one individual. In those few instances outside of the Auckland district in which scrip was issued as part of an intended exchange, the Crown failed in every case to later survey the land and, as such, its claim to it probably lapsed.

Of course, some scrip exchange claims 'lapsed' within the Auckland district also. Adding to the 'unprofitability' of such exchanges was the fact that the exaggeration common to many claims meant that when a claim was eventually surveyed, in all probability it would not return an area equivalent to the standard one acre for each £1 scrip issued. Unfortunately, since these tables do not include

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19. Land Claims Commission, p 42

20. ma 91/20, olc 543

the full scrip land acreage eventually surveyed by the Crown, these points can only be highlighted. Some idea of the extent of the problem, however, can be gained from Commissioner Bell's lamenting in his 1862 report to Parliament that: 'in Hokianga claims alone the scrip issued was upwards of £32,000, while all the land which I could recover [through surveys] . . . for the Crown fifteen years afterwards, including not only the lands exchanged by the claimants but a considerable extent which had never been before a commissioner at all, was 15,446 acres'.<sup>21</sup>

#### **I.4.5 Surplus**

Before beginning to discuss the surplus figures, two points should be reiterated. Firstly, the surplus totals contained in table 5 below include only 21,500 acres of the approximately 75,000 acres of surplus which eventually accrued to the Crown as a result of the Fairburn claim, olc 590. Secondly, as mentioned in the organisation section, the definition of surplus adopted for these tables is quite specific. Essentially, these tables consider as surplus any land that remained within a claim after land to be granted to the claimant had been taken out. Furthermore, the area of surplus had to be defined by survey for it to be included.

All surplus recovered by the Crown came from claims which had been partially granted to a claimant, as opposed to purchases which were considered valid but which were not followed by a grant. There are two related reasons for this. Firstly, as argued earlier, until a claim was surveyed and the presence and extent of any surplus precisely defined, it remained highly uncertain whether or not that surplus would actually accrue to the Crown.<sup>22</sup> Secondly, as has been highlighted in the main text of this report, one of the main objectives of the 1856 Land Claims Settlement Act was to provide sufficient incentive for claimants to survey the entire area of their claims. Since it was the 1856 Act which actually prompted most surveys, it was rare for surplus to be surveyed, and therefore recovered by the Crown, without a claimant's self-interest in achieving a grant also being present.

Given the crucial relationship between grants and surplus, and remembering that the Auckland district accounted for 81 percent of all claims which resulted in a grant, it is perhaps not surprising that surplus was, with two exceptions, exclusively an Auckland occurrence. As can be seen from table 4 below, four out of every ten Auckland district claims which resulted in grants also contained surplus which subsequently accrued to the Crown. The average area of surplus per surplus-accruing claim was 1082 acres, considerably greater than the 650 acres which constituted the average size of those claims which resulted in grants.

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21. Land Claims Commission, 'Report of the Land Claims Commissioner', 8 July 1862, AJHR, 1862, d-10, p 7. As an aside, the issues raised by Bell's implying that the Crown had a right to recover areas covered by previously uninvestigated claims are covered in the Hokianga scrip case study.

22. See above, p 19

District	Surplus (acres)	No of claims producing surplus	No of claims resulting in grants	Granted (acres)
Auckland	134,994	128	327	247,634
Hauraki	48	1	21	13,880
Bay of Plenty	6785	1	4	11,172

Table 4: Districts in which surplus accrued to the Crown

#### **I.4.6 Reserves**

As evidenced by the absence of any distinct reserve column in the district tables, reserves were not a prominent outcome of old land claims. That this was the case may not seem that unusual, particularly when it is considered that, prior to the signing of the Treaty of Waitangi, there was no obligation upon purchasers of Maori land to reserve for the future use of the vendors, any portion of a sale. This fact is reflected in the absence of reserve provisions or explicit exceptions in most old land claim purchase deeds.

The signing of the Treaty, however, created a clear obligation on the behalf of the Crown to ensure that Maori retained a sufficient endowment for their future needs. Such an obligation was foreshadowed in Normanby's August 1839 instructions to Hobson, in which he warned the soon-to-be Governor that Maori 'must not be permitted to enter into any contracts in which they might be the ignorant and unintentional author of injury to themselves. You will not, for example, purchase from them any territory, the retention of which would be essential, or highly conducive, to their own comfort, safety or subsistence'.<sup>23</sup> Similar sentiments were expressed by Normanby's successor, Lord Russell, in his additional instructions with regard to the protection of the aborigines of New Zealand, which he sent to Hobson in January 1841. In those instructions, Russell instructed Hobson that: 'The surveyor-general should also be required, from time to time, to report what particular tract of land it would be desirable that the natives retain for their own use and occupation'.<sup>24</sup> While both these comments were made with direct reference to the operation of the Crown's pre-emptive right, it is nonetheless surprising that no explicit provision was made in any of the Ordinances governing old land claims for the investigating commissioners to apply a similar standard of care to the post-Treaty validation of pre-Treaty transactions. Clearly, the commissioners themselves seemed to think that the obligation that accompanied the operation of the Crown's pre-emptive right was equally applicable to their investigation of pre-Treaty 'purchases'. This can be seen in their writing in May 1842 that Maori:

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23. Normanby to Hobson, 14 August 1839, BPP, vol 3, p 87

24. Russell to Hobson, 28 January 1841, BPP, vol 3, p 174

cultivation[s], and fishing and sacred grounds, ought . . . to be in every case reserved to them, unless they have, to a certainty, been voluntarily and totally abandoned. If some express condition of this nature be not inserted in the grants from the Crown, we fear the displacement . . . of the natives, who, certainly, never calculated the consequences of so entire an alienation of their territory.<sup>25</sup>

The extent to which the commissioners put these sentiments into practice through the explicit exclusion of such areas in their grant recommendations can only be assessed by a systematic search of each individual old land claim file. As stated in the methodology section, such a search was not feasible within the context of this report.

Furthermore, such a search would in fact conflict with one of the primary objectives of this database which is to focus on the end result of the old land claims process. For even if the early commissioners did in fact systematically exclude such areas as part of their grant recommendations, this by no means guaranteed that such areas remained in Maori hands. As previously indicated, until an old land claim was surveyed, it was uncertain that the area would actually be alienated, either to the claimant or to the Crown. Conversely, once an area was surveyed it was highly unusual for the alienation of that area to be successfully challenged by Maori. This is equally applicable to any reservations or exceptions which were part of those same recommendations. Of course, the classic example of this is the third of Fairburn's 1836 Tamaki claim, approximately 27,000 acres, which the commissioners recommended be returned to the Maori vendors but which, through the lack of a comprehensive survey of the entire claim, was first treated as surplus and then purchased by the Crown.

The best indication of whether or not a commissioner-recommended exception was in fact observed, is provided by the presence of that exception or reservation upon the olc plan that was eventually produced after the claim was surveyed. Old land claim 289, Lachlan McCaskill's Hikutaia North claim, subject of a case study in this report, provides an example of a Godfrey-recommended exception missing from the 1857 survey which subsequently formed the basis of the Bell-issued grant. Conversely, the olc plan 1 for George Clarke's Whakanekeneke claim at Waimate, olc 634, includes both the original exception provided for in the commissioner's report, as well as an additional 411 acre Native reserve, the origins of which are uncertain. A similar case to this is William Webster's Piako claim, olc 726. Old land claim plan 162, surveyed in 1860, has also been marked with the words 'Native Reserve'. That reserve, which is shown on a 1911 sketch map as having been established, must be a different one from that originally excepted as a result of the commissioner's investigation in 1843 because the latter was purchased by the Crown in 1853.<sup>26</sup>

Overwhelmingly, however, few reserves or other exceptions were marked upon the survey plans consulted in the collation of these lists. Neither do the other

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25. Commissioners to Hobson, 2 May 1842, ia 1/1842/721

26. The location of both these reserves is shown on the 1911 sketch map which forms the basis of figure 7 in the Webster case study.

sources consulted provide much indication of reserves being established. In total, only 17 claims, 15 in Auckland and one each in Wellington and Waikato, incorporated some form of reserve. But even this figure is slightly misleading as a measure of the extent to which the commissioner's original exceptions were observed. Of the 17 claims which incorporated some form of reserve, at least four had their reserves established as part of the Hokianga scrip surveys of the late 1850s.<sup>27</sup> As was highlighted in the Hokianga case study earlier in this report, these reserves predominantly recognised cultivations existing at that time, rather than finally establishing reserves provided for in the reports of the early commissioners. Ignoring this for the moment, the combined total acreage of the reserves in those 12 claims for which we have acreages was 1844 acres. This represents 0.3 percent of the national surveyed acreage, argued in an earlier section to be the best measure of the probable extent of land alienation as a result of the old land claims process.

This raises the rather significant question of whether the Crown should have returned some of the 145,581 acres it accrued as surplus from old land claims to compensate Maori for the extremely small area of reserves established as a result of old land claims. Such an allocation would not have been at odds with the sentiments outlined earlier by Normanby and Russell. Against this, it might be argued that at the time of the commissioners' investigations, Maori were still in possession of the majority of their lands. This argument has some merit although in some instances where a particular old land claim was especially large, for example, Fairburn's Tamaki claim, or where old land claims were particularly concentrated, for example, the Bay of Islands, any such assumption might reasonably be challenged. Furthermore, the argument as a whole loses some merit when it is considered that in most instances the Crown did not take actual possession of its surplus until the surveys prompted by the passage of the 1856 Act. By then, it was becoming increasingly obvious in the region most heavily effected by old land claims, the Auckland district, that certain iwi had alienated so much land to the Crown that they had failed to retain, in the words of Lord Normanby, an amount 'which would be essential, or highly conducive, to their own comfort, safety or subsistence'.

## **I.5 CONCLUSION**

With all the qualifications which have attended this written summary of the district tables that follow, it might be asked what value can be placed upon the results. Such a question seems particularly appropriate given the need to consider non-quantitative factors, such as the quality and location of the land alienated, and the real uncertainty that surrounds important aspects of the old land claims process, in particular, the fate of 'lapsed' claims and the amount of scrip exchange land successfully 'recovered' by the Crown.

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27. See the Hokianga case study in this report, p 65

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The answer to such a question is that while we have not established definitive quantification of the outcomes of the old land claims, nonetheless, clear trends do emerge from the data assembled. The most important of these is the clear and pronounced dominance of the Auckland district with regard to the outcome we have referred to as 'effective alienation'. Whether measured in terms of grants issued, scrip and surplus acreage recovered, or most meaningful of all, acreage surveyed, this dominance stands out very clearly.

The second main conclusion which might be taken from this written summary is that, outside of the Auckland and New Zealand Company districts, old land claims did not exert this impact if measured only in terms of the probable extent of land alienated. None the less a significant rate of alienation occurred in other districts when measured qualitatively. For example, in the Southern South Island, pre-Treaty transactions may have set up a pattern of alienation continued with the subsequent Crown purchases.

As regards the qualitative and other qualifications which attend these conclusions, they can only be overcome by more in-depth research of specific examples. Given that the great extent of the Auckland Rangahaua Whanui district claims have yet to come before the Waitangi Tribunal, much of this research remains to be undertaken.